IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 5 OF 2005

Shri Ram S. S. Parihar
and others. ... Petitioners

versus

State of Goa, through
learned P.P. and others. ... Respondents

Mr. P. P. Singh, Advocate for the Petitioners.

Mr. I. Aga, Advocate for the Respondent Nos.3 and 4.

CORAM : N. A. BRITTO, J.

DATE : 21ST APRIL, 2006.

ORAL ORDER

Heard Mr. P. P. Singh, the learned Counsel on behalf of the petitioners and Mr. I. Aga, the learned Counsel on behalf of the respondent nos.3 and 4. None present on behalf of respondent nos.1 and 2.

2. The petitioners are the accused and respondent no.3 is the first informant in a case which has been investigated by Cuffe Parade Police Station and a charge-sheet filed before the

Additional Chief Metropolitan Magistrate, Esplanade Court, Mumbai, under Sections 406, 498-A r/w Section 34 I.P.C. and which is pending before the said Court.

3. It appears that respondent no.3 was married to petitioner no.2 and the said marriage took place at Ponda, Goa and after the said marriage respondent no.3 came to reside with petitioner no.2, her husband, at the said place and thereafter disputes and differences have arisen between them. All the petitioners who are the accused in the said Criminal case No.124/PW/2004 before the said Court at Mumbai are close members of the family of the said petitioner no.2 and after his marriage, of respondent no.3.

4. This petition was filed invoking Section 407 of the Code of Criminal Procedure, 1973(Code, for short) and Articles 226 and 227 of the Constitution of India with a prayer to transfer the said C.C. No.124/PW/2004 from the 47th Court of Additional Chief Metropolitan Magistrate, Esplanade, Mumbai to be tried by the learned J.M.F.C. at Ponda, Goa but now it has been conceded, on behalf of the petitioners and, in my view

rightly, that this petition be considered as a transfer application filed under Section 407(1)(c) of the Code. It is well settled that when the Code prescribes the remedy for transfer there is no question of exercising extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5. A preliminary objection has been taken, as regards the maintainability of the petition before this Court sitting at Panaji and that is basically with reference to Rule 3, of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 which reads as follows:-

> "3. All appeals, applications, references, petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution of India, arising in the State of Goa, which lie to the High Court at Bombay, shall be presented to the Special Officer at Panaji, Goa and shall be disposed of by the Judges sitting at Panaji, Goa...
>
> Provided that the Chief Justice may, in his discretion, order that any case arising in the State of Goa shall be heard at Bombay...

> Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Panaji, Goa.

5. Whilst this petition was pending before this Court here at Panaji, the respondent no.3 filed a transfer application being Miscellaneous Application No.6746/2005 to the Hon'ble Chief Justice at Mumbai and along with it filed another application bearing No.6747/2005 for interim reliefs and although the Hon'ble Chief Justice was pleased to stay further proceedings in this petition before this Court at Panaji, subsequently the stay was vacated and the main petition namely TMA/6746/2005 was made over by the Hon'ble Acting Chief Justice to be decided by Justice R. S. Mohite at Mumbai. The parties are in agreement that the said TMA/6746/2005 was filed in terms of the first proviso below Rule 3 of Chapter XXXI of the said Rules, 1960. Subsequently, on or about 8-3-2006 an Order has come to be made by Justice R. S. Mohite in the said TMA/6746/2005 which reads as follows:-

> "Matter is moved urgently on the footing that the Criminal

> Writ Petition No.5/2005 before the Goa Bench is listed for admission. Even if the matter is admitted, the matter can still be transferred if so directed. Matter to be placed on the Board as scheduled".

6. It is submitted that the said Order dated 8-3-2006 was made by a designated Judge of this Court, by the Hon'ble Chief Justice.

7. Since there is no stay of proceedings granted by the Hon'ble Chief Justice in the said TMA/6746/2005 there are two options open before me. One is to defer a decision as regards the maintainability of this petition before this Court at Panaji till TMA/6746/2005 is decided or proceed to decide the preliminary objection raised on behalf of the respondent nos.3 and 4 that this petition cannot be entertained by a Judge of this Court sitting at Panaji. I proceed to decide the second option.

8. Parties do not dispute that the filing of petitions, applications, etc. before this Court at Mumbai is governed by Chapter IV of the Rules, 1960. Likewise, there is also no dispute

that Rule 1 of Chapter XXXI of the Rules, 1960 deals with the filing of petitions, applications, etc. before the Bench at Nagpur and likewise Rule 2 deals with the filing before the Bench at Aurangabad. The controversy is restricted to the words "arising in the State of Goa", appearing in Rule 3, Chapter XXXI of the Rules, 1960. The contention of the petitioners is that respondent no.3 not only married petitioner no.2 at Ponda, Goa but lived with him at Goa and the offences, alleged, if any, took place within the jurisdiction of this Court sitting at Panaji i.e. at Ponda, Goa and, therefore, ought to have been tried by the learned J.M.F.C., Ponda, the Court in Mumbai where the case is pending, having had no jurisdiction because none of the offences took place within the jurisdiction of that Court.

9. On the other hand, it has been submitted by Mr. I. Aga, the learned Counsel on behalf of the respondent nos. 3 and 4, that the expression "arising in the State of Goa", has to be construed in relation to proceedings which are pending in the State of Goa and in case the proceedings were pending before any of the Courts in Goa then this Court sitting at Panaji would have been in a position to transfer such case from a Court in Goa

to a Court in Mumbai. Mr. Aga has also referred to the explanation appearing below Rule 4 of the said Rules, 1960. However, in my view that explanation is in relation to what has been stated in Rule 4 and cannot apply to Rule 3 of the said Rules, 1960. Mr. Aga has also placed reliance on two decisions of this Court. The first decision in the case of **Matadust(India) Ltd.** v. **State** (1998(1) G.L.T.404) related to Rule 986-A of the Original Side Rules of this Court. The decision was given with reference to a Company which had its registered Office in the Union Territory of Daman and this Court observed that after Statehood the jurisdiction of this Court at Panaji is restricted to territorial limits of the State of Goa and that the petition ought to have been filed before the High Court at Bombay which exercises jurisdiction over the Union Territory of Daman. The second case is of **Shivkumar Patil** v. **Government of India** (1995(1) GLT 93). This was a case where the Government of Goa had sought assistance of the Directorate General of Supplies and Disposals who had their office at Mumbai to call for tenders and award the same on their behalf and the unsuccessful tenderer had filed a petition before this Court at Panaji, and in such

a situation, a learned Division Bench of this Court observed that on the facts and circumstances of the case the provisions of Rule 3 Chapter XXXI could not be ignored when there has been clear demarcation with regard to the exercise of jurisdiction by the benches of the Bombay High Court and consequently the petition was not entertained for want of jurisdiction.

10. There can be no dispute that the High Court of Bombay is a common High Court for the States of Maharashtra and Goa but the allotment and disposal of judicial work has got to be in accordance with Chapter IV and XXXI of the Rules, 1960. As already stated, as far as the filing at the principal seat of the High Court at Mumbai is concerned the same has been dealt with by Chapter IV, and the filing at the Benches has been dealt with by Rules 1 and 2 of Chapter XXXI. As far as the State of Goa is concerned, it has been dealt with by Rule 3. The word "arise", as defined in Black's Law Dictionary, Sixth Edition, means to spring up, originate, to come into being or notice; to become operative, sensible, visible or audible; to present itself. A cause of action or suit "arises" so as to start running of limitation, when party has a right to apply to proper tribunal for relief and it arises at

time when and place where act is unlawfully omitted or committed.

11. It is quite possible that the offences alleged for which the petitioners are being prosecuted at the 47th Court at Mumbai indeed took place at Ponda, Goa but I must hasten to add that we are not concerned at present with that matter. A cause of action to try the said offences would be certainly different from a cause of action to file a transfer application from a Court where the case is pending. In other words since the case is pending at Mumbai, the cause of action to transfer the same would arise in Mumbai and not in Goa, even assuming the offences alleged in the said case arose in Goa. The case is pending at Mumbai within the jurisdiction of the principal seat of the High Court. The said case is not pending in the State of Goa and, therefore, a cause of action to ask for transfer of the said case cannot be said to have arisen in the State of Goa and viewed thus, any application for the transfer of the said case pending before any of the Subordinate Courts at Mumbai would have to be dealt with under Chapter IV and not under Rule 3 of

Chapter XXXI of the Rules, 1960. In other words, in my view, the cause of action to file the present application for transfer has not arisen in the State of Goa as contemplated by Rule 3 of Chapter XXXI of the Rules, 1960.

12. As a result, the petitioners would be at liberty to file an appropriate application before the principal seat of this Court at Mumbai. For the transfer of the said case, this Court sitting at Panaji would not be in a position to entertain a transfer application in the light of what has been stated in Rule 3 of Chapter XXXI of the Rules. At this stage, Mr. P. P. Singh submits that the petition itself be ordered to be placed before the Hon'ble Chief Justice to be disposed of along with TMA/6746/2005. Mr. I. Aga has left the matter to the Court. The petition therefore shall be returned to the petitioners to be presented at Mumbai to be dealt with with the said main petition.

13. With the above observation, the petition is disposed of. The records and proceedings called from the 47th Court of

Additional Chief Metropolitan Magistrate, Esplanade Court at Mumbai be returned forthwith.

N. A. BRITTO, J.

RD